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MONTANA SENTENCING COMMISSION

**Report to
THE MONTANA 55TH LEGISLATIVE ASSEMBLY**



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President of the Senate

Honorable Jean Turnage
Chief Justice, Supreme Court

Honorable John Mercer
Speaker of the House

It has been a privilege to serve on the Montana Sentencing Commission. I am pleased to present this report unanimously adopted by the commission, which summarizes the commission's work and recommendations.

I learned three valuable lessons through the commission's work: good decisions must be based upon good data; legislators, criminal justice professionals and members of the public have a great deal to learn from one another and the commission model facilitates that learning process; and finally, change is a process, not an event.

I am pleased and proud that through thoughtful discussion and compromise the members of the Montana Sentencing Commission unanimously adopted this report, the recommendation to extend the commission, and the goals which the commission should strive for in the next two years.

The recommendations in this report represent the first steps in the process of improving our criminal justice system. These recommendations are a foundation on which to build.

I thank the Legislature for creating this commission, the Governor for his interest and support of the commission's work, the commission members for their dedication, and the commission staff for their enthusiasm and hard work.

Sincerely,

A handwritten signature in dark ink, appearing to read "Sharon Estrada", written over a large, stylized circular flourish.

Sharon Estrada
Montana State Senator
Chair, Montana Sentencing Commission

MONTANA SENTENCING COMMISSION

Report to the Legislature

Submitted to:

Montana 55th Legislative Assembly

the

Montana Sentencing Commission
G.P. "Chris" Christensen, Administrative Officer
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Acknowledgements

As the Montana Sentencing Commission held its first meeting on July 31, 1995, none of the commission members fully appreciated the difficult and complex work which lay ahead. It quickly became evident, however, that many of Montana's criminal justice professionals, organizations, and concerned citizens would be great support to the commission.

During the months of July and August, 1995, the commission members, some of whom lived as far apart as Kalispell and Sidney, did not have staff members to rely upon. During this period, Department of Corrections employees Janet Bouchee, Julie Buchman, and Lindy Proue organized meetings, made travel arrangements, recorded minutes of the meetings, and generally assisted the commission in every way possible. Despite their already overburdened workloads, they accepted these extra responsibilities without complaint.

Throughout the Commission's existence, other Department of Corrections professionals provided invaluable support to the commission. Ted Clack, who was the research manager for the department, assisted the commission on at least a weekly basis. He also contributed his talent and knowledge to the Subcommittee on Data Collection and Research Methodology.

Furthermore, Bill Furois and Joe Williams frequently assisted the commission on budget matters. Dave Ohler, the department's chief legal counsel, attended every commission meeting, answered legal questions and conducted research as requested, and served on the Subcommittee on Sentencing Guidelines.

The commission is also grateful to the Department of Corrections for respecting the Commission's autonomy even though the commission was administratively attached to the department.

Commission members devoted their first few meetings to learning. The Montana Sentencing Commission is extremely grateful to Sandra Shane-Dubow, Consultant and Former Executive Director of the Wisconsin Sentencing Commission, , Carle Jackson, Former Director of the Louisiana Sentencing Commission, and Robin Lubitz, Executive Director of the North Carolina Sentencing and Policy Advisory Commission, who traveled to Montana in September and October and offered the Commission the wisdom of their work and experience. All of these professionals donated the time they spent with the commission.

As is common in our great State of Montana, the commission had a great deal of work to complete on a limited budget with a staff of two persons. The commission extends its gratitude to both the Montana Board of Crime Control and the Edna McConnell Clark Foundation for the generous grants given to support the work of the commission. The Montana Board of Crime Control grant enabled the commission to complete a public opinion telephone survey of 800 Montana households and to collect extensive data from 1000 criminal cases in 46 Montana counties. The Edna McConnell Clark Foundation grant enable the commission to conduct public forums in 15 Montana communities during the month of October 1996.

In addition to the financial support received for the above projects, the commission is also grateful to all of those who cooperated in the process of completing the projects. The public expressed great willingness to participate in the telephone survey; Montana judges and the clerks of court demonstrated tremendous cooperation to allow the commission to complete the data collection project; finally employees of Market Revelations, Ltd. devoted many hours to successfully complete both projects

Many people offered support and guidance to assist the commission in completing the

public opinion forums. The commission extends special thanks to Chris Christensen, Karen Peak-Seiler, and Cletis Gregory, Jr. for facilitating the forums; Stephanie Powell, who played a key role in organizing the forums; and finally to the members of the public who participated in the forums.

Special thanks are also due to Tammy Plubell and Chris Christensen for serving as the commission administrative officers. Ms. Plubell served from August 1995 through October 1996, and Mr. Christensen served from October 1996 through the present.

In conclusion, the Montana Sentencing Commission extends its gratitude to Montana's 1995 Legislature which created and funded the commission. By creating the commission, the Legislature demonstrated its commitment to solving the problems facing the criminal justice system through thoughtful, fact-based, consensus decision-making.

[The text in this section is extremely faint and illegible. It appears to be a multi-paragraph document, possibly a letter or a report, with several lines of text visible across the page.]

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CHAPTER 1

INTRODUCTION

The 1995 Legislature created the Montana Sentencing Commission made up of representatives from the legislative branch, judicial branch, executive branch, local law enforcement, and the public. Montana became the 16th state to form a sentencing commission since Minnesota, Washington, and Oregon created commissions in the late 1970s. A commonly recognized goal of a sentencing commission is to bring together participants within the criminal justice system and the public to assist the Legislature in making informed, thoughtful, comprehensive decisions about sentencing policy and practices.

The Legislature provided \$197,237 to fund the commission for two years and mandated the commission to: (1) decide whether sentencing guidelines are advisable for Montana, and if so, to draft guidelines for consideration by the 1997 Legislature; and (2) make recommendations about implementing the “two-strikes/three strikes” law the Legislature enacted effective January 1997. The Legislature also authorized the commission to collect and study data, studies, and research from public and private entities concerning sentencing processes and guidelines; publish and distribute material concerning sentencing processes, sentencing guidelines, sentences imposed and the effect of those sentences; make recommendations to the 55th Legislature concerning modification or enactment of sentencing and correctional statutes that the commission believes is necessary or advisable to carry out an effective, humane, and rational

sentencing policy; make a recommendation to the 55th Legislature as to whether the commission should be continued in existence; identify the impact of good time credits and sentencing guidelines on the criminal justice system; and make a recommendation to the 55th Legislature concerning the advisability of good time credits.

The Legislature mandated the commission to meet at least quarterly. The commission held its first meeting on July 31, 1995 in Helena, Montana. At this meeting the commission elected Gallatin County Attorney Mike Salvagni to serve as the Chairman and Senator Sharon Estrada to serve as the Vice-Chair. The commission subsequently conducted the following meetings: August 17, 1995; September 14, 1995; October 16, 1995; March 12, 1996; May 9, 1996; June 13, 1996; June 25, 1996; July 25, 1996; August 27, 1996; September 19, 1996; November 20, 1996; and December 19, 1996.

The commission hired Tammy K Plubell as the Administrative Officer in August 1995 and Stephanie Powell as the Administrative Secretary in April 1996. Ms. Plubell resigned her position in October 1996. G.P. "Chris" Christensen was selected to fill the Administrative Officer position from October 1996 through May 1997.

Commission member Gloreen Azure-Strauser resigned her appointment to the commission in July 1996. Gallatin County Attorney and Commission Chairman Mike Salvagni resigned his appointment to the commission effective November 30, 1996, following his election to the district court in Gallatin County. Senator Sharon Estrada, Commission Vice-Chair, agreed to ascend to the Chair position effective December 1, 1996. Assistant Chief Deputy Attorney General Beth Baker was elected by the commission to fill the position of Commission Vice-Chair effective December 1, 1996.

In October 1995, the commission members approved a work plan which specified the goals of the commission and the methods and time frames for achieving those goals.¹ In accordance with the work plan the commission members divided into five working subcommittees. Each member served on at least one of the following subcommittees: Administrative Matters; Data Collection and Research Methodology; Intermediate Sanctions; Public Policy; Public Opinion, Education and Outreach; and Sentencing Guidelines. The completed projects of each subcommittee are summarized beginning on page 12.

Perhaps one of the most important endeavors of the commission was to develop a collective understanding of the historical perspective of sentencing policy, purposes, and practices throughout the history of our country and state. In order to prepare and plan for the future of our criminal justice system, we must look with a keen eye to the past. A summary of the commission's findings follows.

¹ The Montana Sentencing Commission work plan is on file in the commission office and is available upon request.

EXECUTIVE SUMMARY

There are three types of sentencing systems in use in the United States: determinate sentencing, under which the Legislature sets a specific penalty for each offense; indeterminate sentencing, under which the Legislature sets a range of penalties within which the sentence may be imposed; and sentencing guidelines, under which a commission prepares guidelines to specify the sentence an offender should serve based upon the offender's criminal history and the severity of the offense. While a majority of states, including Montana, have indeterminate sentencing systems, 16 states now use a guidelines system. The Legislature directed the commission to study guidelines systems and recommend whether such a system should be adopted in Montana.

After conducting a public opinion survey, studying data from felony sentences imposed in Montana, holding public forums across the State, and preparing a guideline structure for discussion purposes, the commission ultimately concluded that it is not prepared at this time to recommend implementation of sentencing guidelines in Montana. The commission found that, particularly among those who work in the criminal justice system, guidelines are distrusted because they are perceived as removing discretion from the sentencing court to consider all circumstances of an offense, characteristics of the offender, and impacts on the victim in determining the sentence that should be given. Some also believed it is appropriate that the sentence reflect the values of the community in which the offense occurred. The commission also was unable to determine, within the time available, what impact its proposed sentencing guidelines might have on correctional populations.

Projected impacts and better public understanding and acceptance are needed before an ultimate decision may be made concerning the advisability of sentencing guidelines. The

commission concluded that, while its work studying and preparing guidelines was instructive and valuable, additional time should be spent evaluating the current system and whether other changes should be considered within the structure of that system so that a continuum of sentencing options may be developed for all types of offenders. The Commission believes it will serve an important function in the State of Montana by continuing its work to:

(1) monitor criminal sentencing practices in Montana and compile data on current sentencing and release practices, correctional populations, whether disparity exists in sentencing similar offenders for similar crimes, whether current sentencing options provide an appropriate range of sentences to both protect the victim and society and allow adequate opportunity for treatment of nonviolent or first-time offenders, and whether the current sentencing laws and practices for felony offenses are overburdening correctional resources in Montana, which could be better allocated to handle the load.

(2) review current laws concerning correctional policy, maximum and minimum criminal penalties, length of sentences, and sentencing options and make recommendations to the next Legislature for modifications to achieve a simpler, more understandable sentencing system, and to develop a continuum of sentences to deal with all felony offenders within available resources;

(3) develop a system of voluntary sentencing guidelines which may be used by the courts on an experimental basis for the purpose of allowing the commission to evaluate and obtain comment on the guidelines; and

(4) sponsor and carry out a public information program to advise the general public, both within and outside the criminal justice system, about currently available correctional resources and laws concerning correctional policy, maximum and minimum criminal penalties,

length of sentences, and sentencing options.

Finally, the commission was directed by the 1995 Legislature to make recommendations concerning implementation of the policy behind the law commonly known as the “two and three strikes” law, which imposes mandatory life sentences in prison for offenders convicted of certain repeat violent felonies. The commission determined that, in keeping with Montana’s current statutory scheme for indeterminate sentencing and sentencing of repeat felony offenders, the policy reflected in the “two and three strikes” law should be implemented by incorporating it into the statutes for sentencing persistent felony offenders. The commission therefore recommends that offenders convicted of repeat violent crimes now listed in the “two and three strikes” law be sentenced as persistent felony offenders, regardless of when the prior offense or offenses occurred, allowing the sentencing court to impose a sentence in any such case of up to 100 years.

The commission will submit legislation to reflect these proposals. Other recommendations were made by the commission that do not require legislation. First, the commission voted to support the elimination of good time credits, along with a move toward an earned incentive program for Montana’s adult correctional facilities. Under the earned incentive program, inmates receive rewards for good behavior within the prison, but do not reduce their prison sentence. Second, the commission agreed to recommend that the Montana Supreme Court adopt a standard form for judgments imposed in felony criminal cases so that data on sentencing practices can more easily be collected.

CHAPTER 2

HISTORY OF SENTENCING

Purposes of Sentencing

There are four recognized purposes of sentencing criminal offenders: punishment, deterrence, incapacitation, and rehabilitation. At different points in history, society has elevated one or more purposes over others. In the United States today, there are three general types of sentencing structures: determinate, indeterminate, and guideline, in which guidelines can be either presumptive or voluntary. It is important to understand the differences in these sentencing structures since each tends to emphasize different sentencing purposes.

Determinate Sentencing

In a determinate sentencing structure, a conviction for a criminal offense calls for a specific penalty. The Legislature sets the specific penalty that the court must impose. This sentencing structure often elevates the sentencing goals of punishment and incapacitation over other sentencing goals.

Indeterminate Sentencing

In an indeterminate sentencing structure, the Legislature sets very broad sentencing ranges, for example 0 - 40 years. The sentencing court sets the outside limits of each prison sentence. An entity, such as a parole board, determines when an offender is actually released

from prison based upon the offender's behavior and rehabilitative efforts in prison. The sentencing structure elevates rehabilitation above other sentencing purposes.

Sentencing Guidelines

In a guidelines sentencing structure, a commission with broad-based representation drafts guidelines to specify the sentence a criminal offender should serve based upon both the severity of the crime and the offender's criminal history. Sentencing courts apply the guidelines to particular cases and decide when sufficient grounds exist to either increase or decrease the suggested guideline sentence. Such a structure can be voluntary, meaning the judge has no obligation to follow the guidelines but is encouraged to do so; or presumptive, meaning the judge is required to follow the guidelines unless the judge finds sufficient grounds to either increase or decrease the suggested guideline sentence. Many guideline structures emphasize the purpose of punishment over the other sentencing goals. Guidelines structures recognize the importance of effective rehabilitative efforts by attempting to target offenders to appropriate criminal sanctions.

Sentencing in the United States

Prior to the 18th century, society viewed the primary purpose of sentencing as "vindication of the social order." The popular view was that communities should inflict on criminal offenders punishment under conditions of public disgrace, and criminal offenders should permanently lose their reputation for good character. During this period in history, the only clearly recognized purpose of sentencing was punishment.

After the American Revolution, the primary purpose of sentencing shifted to individualized reformatory incarceration wherein the seeds of rehabilitative philosophy were planted. Criminal sentencing laws shifted from imposing severe corporal punishment to

determinate prison sentences. Society began to view crime as a disease which could be cured primarily through an appropriate period of incarceration.

By the mid-19th century, corrections professionals viewed determinate sentencing as a failure because it did not promote good behavior from the criminal offenders within the prison setting. Therefore, in 1870, the National Prison Congress called for a sentencing system which reflected a primarily rehabilitative purpose, rather than a punitive one. The theory was that the Legislature would set broad sentencing limits by statute. The judiciary would then set an appropriate indeterminate sentence. Finally, an executive body, such as a parole board, would determine offenders' actual release dates from prison once the offenders were rehabilitated. By the 1930s, every state in the United States had an indeterminate sentencing structure which incorporated these principles.

By the mid-1960s, some analytical thinkers began to question the success of indeterminate sentencing structures which elevated the goal of rehabilitation over other sentencing goals. Scientific research could neither prove nor disprove that offenders were actually rehabilitated in the prison environment. By 1975, the consensus that rehabilitation was the primary sentencing goal was rapidly eroding. Opponents of indeterminate sentencing criticized that there is no certainty in the punishment of criminal offenders, there is no predictability in the criminal offenders' length of stay in prison, and there is no way to adequately predict and plan for future prison populations.

During this time period states and the federal government began to experience serious prison overcrowding problems and escalating corrections budgets. Between 1975 and 1995, the nation's prison capacity and prison population tripled.² Today, the United States incarcerates a

² *Seeking Justice: Crime and Punishment in America* (Edna McConnell Clark Roundation, 1995), p. 4.

larger percentage of its population than any other nation.³ Further, nationwide, between 1971 and 1990, spending on corrections escalated from \$2.3 billion to \$24.9 billion.⁴ Nationwide, between 1987 and 1993, state spending for corrections outpaced spending for higher education by 41 per cent.⁵ States began to carefully examine the purposes of sentencing and whether their existing sentencing structures were meeting the needs of their states.

Abandonment of Indeterminate Sentencing

Between 1975 and 1995, 21 states abandoned indeterminate sentencing in favor of either a determinate sentencing structure or a guidelines sentencing structure. Determinate sentencing structures are in place in five states: Arizona, California, Illinois, Indiana and Maine. All five states prohibit discretionary parole release but allow some form of good time credits.

Indeterminate sentencing structures are presently in place in 29 states, including Montana. Each state has discretionary parole release, and every state but Hawaii awards good time credits.

Sentencing guideline structures are in place in 16 states. Five states have voluntary guidelines and 11 states have presumptive guidelines. Three states are presently studying guidelines: Montana, Massachusetts and Oklahoma. Massachusetts and Oklahoma have drafted guidelines for legislative consideration.⁶

Montana's Present Sentencing Structure

³ *The Real War on Crime* (The Report of the National Criminal Justice Commission, 1996), p. 3.

⁴ *Seeking Justice: Crime and Punishment in America*, op. cit., p. 8.

⁵ *Seeking Justice: Crime and Punishment in America*, op. cit., p. 9-10.

⁶ A list of state sentencing structures is attached as Appendix A.

Montana has an indeterminate sentencing structure in which the correctional policy states that the sentencing purpose is “to protect society by preventing crime through punishment and rehabilitation of the convicted.”⁷ Montana presently awards day-for-day good time to prison inmates, but the Legislature eliminated good time effective January 31, 1997. Montana will join Hawaii as only the second indeterminate sentencing state to eliminate good time. Offenders in Montana must serve 1/4 of their sentence before becoming eligible for parole consideration. Montana has not been immune from the problems of prison overcrowding and escalating corrections costs.

Prison Overcrowding in Montana

Montana has grappled with prison overcrowding since the inception of its statehood. In more recent history, the 1973 Legislature appropriated \$3.8 million for construction of a new prison. The Legislature later increased this total to \$5.7 million for a 334-bed prison. After the Legislature approved plans for the new prison, populations began to increase. When the new prison was ready to open in 1977 it was already 180 beds too small.

In 1977, the Legislature appropriated \$3.8 million for two additional 96-bed units. By 1979, however, the inmate population was already exceeding design capacity of the newly expanded facility and was approaching absolute maximum capacity of 718. In March 1982 there was a disturbance at the prison and security concerns about the prison increased. Governor Ted Schwinden determined the situation had reached crisis proportions and the state would need new prison facilities. Governor Schwinden called for a special session to review problems in the entire adult correctional program.

⁷ Section 46-18-101, Mont. Code Ann.

During the 1982 Special Session, the Legislature created the Montana Legislative Council Fact Finding Task Force on Corrections. The Task Force concluded:

- (1) Montana has no correctional policy or if it did, it is spread among constitutional, statutory, and administrative authorities and therefore is disjointed and uncertain.⁸
- (2) A clear correctional policy must be articulated then the statutes and administrative rules must be altered to conform to the adopted policy.⁹

In August 1987, Governor Schwinden created a 16-member Criminal Justice and Corrections Advisory Council (CJAC), the makeup of which was very similar to that of the Montana Sentencing Commission. In one of its reports, the Council noted: "One of the most critical problems facing the criminal justice system today is prison overcrowding."¹⁰

As part of its work, the Council received a grant to study sentencing practices in Montana. The 1988 data collection report concluded:

Legislative mandates have increased sentence lengths and added mandatory minimums. Incarceration has not solved the crime problem and has cost taxpayers increasing funds for prison construction. Development of comprehensive sentencing policy which outlines its goals, and provides a continuum of services from probation to incarceration should be a priority to ensure punishment, rehabilitation, public safety, and efficient use of resources. Prison should be reserved for violent and dangerous offenders, especially first time offenders.¹¹

The report further concluded that a more extensive data collection report on sentencing practices in Montana was needed.¹²

⁸ Fact Finding Task Force on Corrections Final Report, p. 6.

⁹ Fact Finding Task Force on Corrections Final Report, p. 6.

¹⁰ CJAC Study of Montana Sentencing Practices, 1987, p. 1.

¹¹ CJAC Study of Montana Sentencing Practices, 1987, p. 28.

¹² In 1995, the Montana Sentencing Commission attempted to achieve that goal. See the Data Collection Subcommittee summary beginning on page 15.

In 1987, the Criminal Justice and Corrections Advisory Council identified prison overcrowding as one of the most serious issues confronting the criminal justice system. In 1995-1996, the Montana Sentencing Commission learned:

- In September, 1994, the new women's prison opened in Billings. The design capacity at the Women's Correctional Facility is 50. As of June 21, 1996, the prison held 69 offenders. Four offenders were in county jails awaiting prison space.
- In fiscal year 1996, the budget for Montana State Prison alone was \$22.5 million. The present design capacity of Montana State Prison is 850. The present emergency capacity at Montana State Prison is 1344. In June 1996, prior to the Department of Corrections transferring inmates to a Texas facility, the population at Montana State Prison was 1345. The number of prisoners held in county jails awaiting transfer to the prison was 214.
- The Department of Corrections has contracted with the County of Dickens, Texas to house up to 400 state inmates due to overcrowding problems at Montana State Prison. To date, the cost of this contract has been \$3.6 million.
- The Legislature eliminated good time in Montana effective January 31, 1997. The elimination of good time may increase prison populations. The projected impact could be as significant as 600 more prisoners by the year 2001.

CHAPTER 3

THE WORK OF THE MONTANA SENTENCING COMMISSION

The challenges and expectations facing the Montana Sentencing Commission as it fulfilled its legislative mandates were great. In an effort to meet the challenges and fulfill the expectations, the commission divided into subcommittees to complete specific projects essential to the commission's decision-making process.

Subcommittee on Administrative Matters

Commission Chairman Mike Salvagni chaired the Subcommittee on Administrative Matters. Other commission members appointed to this subcommittee were Rick Day, Senator Sharon Estrada, and John Thomas.

The Subcommittee on Administrative Matters was in charge of the nuts and bolts of the commission. The subcommittee hired the commission's administrative officer and administrative secretary. Although the administrative officer was responsible for the day-to-day management of the commission budget, the subcommittee approved major expenditures and assisted the administrative officer in obtaining grants to supplement the commission budget.

For fiscal year 1996, the commission had an operating budget of \$97,869. The commission received a grant through the Montana Board of Crime Control in the amount of \$23,555 for the purpose of completing a public opinion telephone survey of 800 Montana

households, and a data collection project that involved collecting data from approximately 1000 criminal cases in 46 Montana counties. The commission spent a total of \$23,455 of the grant monies. The total cost of these two projects was \$35,582.69. Therefore, by receiving the grant, the commission expended \$12,127.69 of its own funds, rather than \$35,582.69.¹³

The commission also received a \$25,000 grant from the Edna McConnell Clark Foundation located in New York City.¹⁴ The purpose of the grant was to allow the commission to conduct 15 public forums around the State to enable citizens from all parts of Montana to participate in the commission process. The cost of completing the 15 public forums, through November 1996, was \$11,860. The commission paid all expenses relating to the public forums from the grant funds.

In fiscal year 1996, 36 per cent of the commission budget, or \$35,669.08, went to pay salaries of the two commission staff members. The average cost of each commission meeting was approximately \$2,500. At the end of the fiscal year the commission returned \$9639.47 to the State's General Fund.

Subcommittee on Data Collection and Research Methodology

Beth Baker chaired the Subcommittee on Data Collection and Research Methodology. Other members of this subcommittee were Ted Clack, Department of Corrections Research

¹³ The grant application, budget and quarterly reports are on file at the Montana Sentencing Commission office.

¹⁴ The Edna McConnell Clark Foundation is active in many societal issues. One of the Foundation's original initiatives was the Program for the Poor established in 1974, to seek just treatment for individuals confined in both penal and mental health institutions. In 1978, the Foundation developed the Program for Justice, which originally encouraged states and the federal government to develop alternatives to prison for criminal offenders. The Justice Program has worked closely with states to link criminal justice policy and the development of correctional programs. The Justice Program actively promotes public education and public involvement in the criminal justice system.

Manager; Rick Day; Judge Robert Holmstrom; and Tammy Plubell, Commission Administrative Officer.

The Data Collection Subcommittee was responsible for completing two major projects. The first was the public opinion telephone survey of 800 Montana households. The second was a project to collect data from approximately 1000 felony criminal cases which Montana district courts disposed of in 1994. The subcommittee completed a request for bid on each project and selected Market Revelations to complete both of the projects.¹⁵

Public Opinion Survey: 800 Montana Households

The commission recognized the limitations of public opinion telephone surveys, but believed a survey was an important first step in obtaining Montanans' views of the criminal justice system. The subcommittee spent many hours drafting a telephone survey which would be useful to the work of the commission.¹⁶ The commission, by consensus, agreed upon the following summary of the information gained from the survey:

Montanans believe punishment and removal of the offender from society should be the primary purpose of sentencing. Montana citizens believe sentencing discretion is appropriately placed with the court; judges' sentencing decisions should be consistent and be primarily based upon crime severity, degree of violence, and the offender's prior record. A lesser consideration in imposing a sentence is the likelihood of rehabilitation. Montanans believe crime is increasing and the current correctional facilities and programs are inadequate. The criminal justice system is second only to education in funding priorities. Funding prevention and prison space is most important for the criminal justice system, and those who believe more funding is necessary are willing to pay more to achieve those objectives. Contradictions in the survey responses suggest a need for public education.

¹⁵ The requests for bid, the bids received and all information concerning the evaluation and selection process are on file at the commission office and are available upon request.

¹⁶ The complete Public Opinion Survey and analysis of the Public Opinion Survey is on file at the commission office and is available upon request.

Data Collection Project: 1000 Criminal Cases in 46 Montana Counties

The subcommittee's second project of collecting data from 1000 criminal cases presented more logistical challenges. In order to make informed decisions about sentencing policy and purposes, there is a corresponding need for a good data base. Such a data base is presently nonexistent in Montana. Therefore, the subcommittee was faced with the task of developing a detailed data collection form and hand-collecting the data from 46 Montana counties.¹⁷

The purpose of this data collection project was to study the existing sentencing practices in Montana and the consistency of those practices on a statewide basis. A data collection report completed in 1987 by the Criminal Justice and Corrections Advisory Council concluded:

All types of sentences imposed, prison, suspended and deferred, are present for all crime types. This disparity may be due to criminal history, or circumstances of the crime, but as they appear different by county around the state, they may warrant a complete review of the criminal code to assure that punishment is "certain, timely, and consistent" as the correctional policy states (46-18-101, Mont. Code Ann.).¹⁸

The Commission's report picked up where the earlier report left off. One of the main questions the data collection report was attempting to answer was: Are sentences for similar offenders with similar criminal histories consistent across Montana?¹⁹

One of the lessons the commission learned from this endeavor is that good data is not readily available in Montana, but it should be - otherwise informed decision-making is an ideal

¹⁷ The data collection forum used in this project is attached as Appendix B.

¹⁸ CJAC Study of Montana Sentencing Practices, 1987, p. 27.

¹⁹ The larger policy question of whether sentences should be consistent is left unanswered at this point in time. The data collection report summarizing the Montana Sentencing Commission's data collection efforts is lengthy and available for review at the commission's office upon request.

rather than a reality. The other lesson the commission learned is that the data it collected is not enough to establish any trends in sentencing practices and to conclude whether unwarranted sentencing disparity is of serious concern in Montana. There are many who will say there is unwarranted sentencing disparity based upon improper factors such as race or sex. There are equally as many who will say there is not unwarranted sentencing disparity. The problem lies in the reality that the available data is too limited to give a fact-based answer to the question. The Montana Sentencing Commission, therefore, cannot answer that question because it has made a commitment to provide conclusions based upon documented facts, rather than speculation.

The greatest piece of information the commission gained from the data collection project is that the State of Montana must develop a mechanism to collect data about sentencing practices on an ongoing basis. There must be a body clearly identified to fulfill this responsibility, and that body must be properly funded.

Subcommittee on Intermediate Sanctions

Senator Sue Bartlett chaired the Subcommittee on Intermediate Sanctions. Other members of the subcommittee were Tony Harbaugh, Barbara Nihill, Commission Chairman Mike Salvagni, and Tammy Plubell. The purpose of the subcommittee on Intermediate Sanctions was to complete a detailed evaluation of the role such sanctions presently play in our criminal justice system and whether the role of such sanctions should be increased or decreased.

The subcommittee defined *intermediate sanctions* as: “a range of punishments, other than prison, which the sentencing court may impose to protect the public by punishing and/or rehabilitating an offender according to the seriousness of the crime, the harm to the victim, the offender’s criminal history, and the likelihood of the offender’s successful rehabilitation.

Intermediate sanctions can be residential, such as pre-release centers, or non-residential, such as community service.”

Each subcommittee member accepted the responsibility for researching and reporting on one of the following sanctions which met the subcommittee’s definition of an intermediate sanction: probation, daily reporting to law enforcement, intensive supervision, pre-release centers, and boot camp.

Through its work, the subcommittee gained information about how intermediate sanctions work in our present system. Notably, some sanctions that met the subcommittee’s definition of an intermediate sanction are not considered intermediate sanctions under our present system. For example, the sanctions of boot camp and pre-release are considered custodial sanctions. Offenders placed in either of those sanctions are considered inmates, rather than probationers. The members of the subcommittee were frustrated with the lack of information available evaluating how the sanctions are working or not working. The subcommittee was unable to determine if the above sanctions are properly funded and used to their best potential. Therefore, it is impossible to make an informed recommendation about expanding the use of certain sanctions and/or limiting the use of other sanctions.

The subcommittee also worked in conjunction with the subcommittee on Sentencing Guidelines to incorporate intermediate sanctions into the draft guideline structure prepared by that subcommittee.²⁰ Every member of the subcommittee recognizes the crucial role intermediate sanctions play in either an indeterminate or a sentencing guideline structure. Further, during the public forums sponsored by the commission, Montana citizens strongly expressed a collective belief that the role of intermediate sanctions should be expanded.

²⁰ A draft of the sentencing grid which incorporates intermediate sanctions is located in Appendix C.

Subcommittee on Public Policy

The Honorable Robert Holmstrom chaired the Subcommittee on Public Policy. Other members of the subcommittee were Glorene Azure-Strauser, Representative Daniel McGee, Anita Richards, and Tammy Plubell.

The subcommittee held one meeting, on January 22, 1996, in Helena, Montana. Tammy Plubell presented an overview of sentencing rationales and existing public policy in Montana. The subcommittee discussed the strengths and weaknesses of Montana's public policy. The subcommittee decided to develop a sentencing policy for Montana. The subcommittee subsequently adopted the *Sentencing Policy, Purposes, and Principles* created by the Subcommittee on Sentencing Guidelines.²¹

Subcommittee on Public Opinion, Education and Outreach

Representative Daniel McGee chaired the Subcommittee on Public Opinion, Education and Outreach. Other members of the subcommittee were Frank DiFonzo, Judge Ted Lympus, Anita Richards, and Tammy Plubell.

The Montana Sentencing Commission had the benefit of learning from the experiences of other sentencing commissions. One of the lessons learned from commissions in other states is that the more open the decision-making process, the more successful the work of the commission. Therefore, the Montana Sentencing Commission created a subcommittee to ensure that the commission process would be an inclusive one.

As a fledgling commission, its goals and objectives at times seemed elusive.

²¹ The Subcommittee on Sentencing Guidelines' *Sentencing Policy, Purposes and Principles* is included on page 24.

Nonetheless, from its inception the commission made every effort to keep legislators, criminal justice professionals and the public apprised of its work. The subcommittee sent out periodic updates to any person or groups of persons who might have an interest in the work of the commission.

The subcommittee developed a questionnaire for chiefs of police, judges, sheriffs, prosecutors, criminal defense attorneys and probation officers to complete. The subcommittee received 170 responses from the justice officials surveyed. Some consistent themes emerged from the criminal justice professionals who responded to the questionnaire. Those themes included the strong belief that the primary reason for sentencing offenders to prison should be punishment rather than rehabilitation.²²

Further, in an effort to keep criminal justice professionals informed about the commission's work, the commission's administrative officer made presentations at the Montana Judges' Association Conference in October 1995; the County Attorneys Association Winter Meeting in December 1995; the Helena Rotary Club in April 1995; the University of Montana Law School in April 1995; the Montana Correctional Association's Annual Meeting in September 1996; and the Montana Judges' Association Conference in October 1996.

The subcommittee also made every effort to generate media interest in the commission's work. The administrative officer and administrative secretary distributed press releases prior to every commission and subcommittee meeting. Individual commission members also took the initiative to keep local media representatives informed about commission events.

Although commission members believed it was important to keep criminal justice professionals involved and interested in its work, they also recognized that the true owners of the

²² The Survey of Justice Officials is attached as Appendix D.

criminal justice system are Montana's citizens, who do not encounter the criminal justice system every day. Therefore, one of this subcommittee's most important tasks was to formulate and organize 15 public forums across the vast state of Montana.²³ The commission conducted 15 public forums between the dates of October 2, 1996, and October 30, 1996, in the following locations: Lewistown, Great Falls, Shelby, Butte, Dillon, Havre, Wolf Point, Hamilton, Bozeman, Helena, Glendive, Miles City, Missoula, Kalispell, and Billings.

Since the Legislature mandated the commission to decide whether a sentencing guideline structure was advisable in Montana, the focus of the forums was comparing our present indeterminate sentencing structure to a guideline sentencing structure. Commission members devoted two meetings to developing consensus on the format and content of the forums.²⁴ Two to three commission members attended and participated in each of the forums. Through grant funds, the commission also hired a facilitator to conduct each forum. Each public meeting began with one commission member delivering the opening statement and the other commission members giving a brief presentation about the commission and information it had gained in the course of its work. The commission made every effort to be consistent in its presentation of information at each forum.

If public attendance allowed, the commission divided the forum participants into small groups and asked the groups to identify the strengths and weaknesses of an indeterminate sentencing structure and a guidelines sentencing structure. After the small groups completed their discussions and presented their groups' identified strengths and weaknesses of each

²³ As noted earlier, the commission received a grant from the Edna McConnell Clark Foundation to complete the public forums.

²⁴ The agenda for the public forums is attached as Appendix E.

sentencing structure, any person attending the forum who wished to address the commission with questions or comments was permitted to do so.

A total of 315 Montana citizens attended the forums. About 50 per cent of those attending worked within the criminal justice system. Upon evaluating the strengths and weaknesses the public identified in both sentencing structures it is apparent that there are commonalities among the forum locations. The strengths of our present system that forum participants most often identified were:

1. The ability of the judges to tailor the sentence to the individual circumstances of the case.
2. Incentives for offenders to behave well and participate in rehabilitative programs in prison.
3. The emphasis on the rehabilitative philosophy.

The weaknesses that members of the public most often identified about our present system were:

1. There is a lack of truth in sentencing/certainty in sentencing.
2. There is inconsistency in sentencing.
3. Offenders are released too soon.
4. There are not enough alternatives to prison and therefore too many offenders are sent to prison.

The strengths of a guideline system that members of the public most often identified were:

1. There is truth in sentencing.
2. Sentences are more consistent and fair.
3. The system is easier to understand.
4. Elevating the sentencing purpose of punishment makes good sense to victims of crime and members of the public.

The weaknesses of a guideline system that members of the public most often identified were:

1. There is less flexibility to tailor the sentence to the individual circumstances of the offense and offender.
2. The system shifts the discretion from the judge to the prosecutor which can result in charge bargaining.

3. There are fewer incentives for offenders to behave and participate in treatment programs.
4. The impact on resources/cost is unknown.

The public most often identified the following as ways to improve our sentencing system:

1. Develop more intermediate sanctions.
2. Adopt “truth in sentencing,” meaning the time given is the time served or close to the time served.
3. Develop more/better treatment programs.
4. Offenders must work and we must develop programs to enable them to work.
5. Devote more of our resources to Corrections.
6. Educate and involve the public in the criminal justice system on an ongoing basis.
7. Dedicate more resources to prevention and youthful offenders.

Overall, the forums were well-received by the public. Two strong messages were clearly delivered through the forum process. The first is that if we want the public to have faith in the criminal justice system we must include them in the system through ongoing public education programs and workshops. The second is that confusion about our current system and about a guideline system is present in every corner of our state, even among those who work within the criminal justice system. Both messages strongly support the need for ongoing education programs.²⁵

Subcommittee on Sentencing Guidelines

Barbara Nihill and the Judge Ted Lympus co-chaired the Subcommittee on Sentencing Guidelines. Other members of the subcommittee were David Stenerson, Representative John Johnson, Senator Sharon Estrada, Tammy Plubell and Dave Ohler, Department of Corrections

²⁵ The Public Forum Final Report is on file at the Montana Sentencing Commission office and is available upon request.

Chief Legal Counsel. The Subcommittee on Sentencing Guidelines completed extensive research on sentencing guidelines in Oregon, Washington, North Carolina, Arkansas, Louisiana, Kansas, Minnesota, and Ohio. The subcommittee did not devote time to researching federal sentencing guidelines because of the strong belief held by all commission members that the federal sentencing guidelines were a poor model because they too severely limit judicial discretion and the human factor in sentencing decisions. The guidelines which other states have adopted, however, are different from the federal guidelines in many aspects, including guiding but not limiting judicial discretion, and allowing for flexibility in sentencing decisions.

Prior to creating a draft set of sentencing guidelines, the subcommittee members developed a policy statement as the foundation for the guidelines. The full commission adopted the following policy statement by consensus:

SENTENCING POLICY, PURPOSES AND PRINCIPLES

The Montana Constitution provides that laws for the punishment of crime are founded upon the principles of prevention and reformation.

In recognition of these founding principles, the purposes of sentencing are:

- 1. To punish each offender commensurate with the nature and degree of harm caused by the offense;*
- 2. To protect the public by incapacitating violent offenders and serious repeat felony offenders;*
- 3. To provide restitution, reparation and/or restoration to the victims of crime;*
- 4. To encourage the offender's self-improvement.*

In order for the sentencing purposes to be realized, the State of Montana has adopted sentencing standards which promote the following principles:

- 1. Sentencing and punishment must be certain, timely, consistent, and understandable;*
- 2. Sentences should be commensurate with the punishment imposed on others committing the same offenses.*
- 3. Sentencing practices must be neutral with respect to race, gender, and social and economic status.*
- 4. Sentencing practices must permit judicial discretion to take into account aggravating and mitigating circumstances.*
- 5. Sentencing practices must punish violent and/or serious repeat felony offenders with incarceration. Sentencing practices must punish nonviolent felony offenders without serious criminal records with intermediate sanctions.*

In order to accomplish the purposes of sentencing and the principles of the sentencing standards, adequate prison space and intermediate sanctions must be available, and we must make efficient use of those resources. This requires ongoing collection, storage, and evaluation of data concerning criminal justice practices.

The Creation of Sentencing Guidelines

Creating sentencing guidelines proved to be an arduous, tedious but successful process. The subcommittee members spent long hours together and became artful at compromise.

The Crime Seriousness Ranking

The first task the subcommittee completed in its mission to draft a set of sentencing guidelines was to rank all of the crimes in Title 45 of the Criminal Code, according to their severity. The subcommittee members divided the crimes into ten levels. Level one represented the most serious crimes and level ten represented the least serious. In order to rank the crimes, the subcommittee members relied upon the following three factors:

1. The nature and degree of harm caused or likely to be caused by the offense;
2. The culpability of the offender;
3. The rights of the victim.

The full commission reviewed the subcommittee's draft of the crime seriousness ranking. After lengthy discussion, the full commission adopted the crime seriousness ranking.²⁶

The Criminal History Scale

Since the severity of the crime and the criminal history of the offender are the two primary factors in determining the appropriate sentence in a guideline sentencing structure, the subcommittee members next developed a scale which identifies how an offender's prior criminal history will impact his or her sentence. The full commission, by consensus, adopted the criminal

²⁶ Please see the Crime Seriousness Ranking in Appendix F.

history scale.²⁷

The Sentencing Guidelines Grid for Non-Drug Offenses

After many long hours of discussion and compromise, the subcommittee members developed a sentencing guidelines grid for non-drug offenses which the members presented to the full commission. At the July 25, 1996 meeting, the Montana Sentencing Commission, by consensus, adopted the sentencing grid for non-drug offenses,²⁸ for the purposes of discussion and gaining impact projections for implementing the guidelines.²⁹

Perhaps the greatest achievement of the Subcommittee on Sentencing Guidelines was not the end product, but rather the process in which subcommittee members participated to achieve the end product. The subcommittee was made up of divergent people with varied backgrounds. The subcommittee members learned a great deal from one another and the end product reflects every member's willingness to listen, learn, and compromise.

²⁷ Please see the Criminal History Scale attached as Appendix G.

²⁸ Please see the sample Sentencing Guideline Grid for Non-Drug Offenses attached as Appendix H.

²⁹ The commission was not able to complete the fiscal impact projections because of shortages in both time and money. The projected cost for obtaining the impact projections from the National Center for Crime and Delinquency is approximately \$35,000.

CHAPTER 4

MONTANA SENTENCING COMMISSION RECOMMENDATIONS

The Montana Sentencing Commission met on November 20, 1996, and will recommend that the Montana 55th Legislative Assembly not implement sentencing guidelines at this time.

However, the Montana Sentencing Commission will recommend that the commission remain in existence for four primary purposes:

- to continue collecting data on criminal sentencing practices in Montana;
- to develop a system of voluntary sentencing guidelines for use on an experimental basis and to assess the experimental guidelines;
- to review the current maximum and minimum penalties prescribed in the Montana criminal code, as well as the current sentencing policy and sentence ranges, and make recommendations to the 1999 Legislature for modifications to achieve a simpler, more understandable sentencing system; and
- to continue serving an educational function.

The commission was also charged with making recommendations for implementing the public policy contained in the "two-strikes, three-strikes" law. Passed by the 1995 Legislature, that law imposes mandatory life sentences for persons convicted of certain repeat violent crimes. The commission will recommend to the Legislature that the policy behind the current "two-strikes, three-strikes" law be incorporated into existing laws for the treatment of repeat felony offenders. Those laws allow a person convicted of a second felony within five years of a prior

conviction or release from prison to be sentenced to prison for up to 100 years. The commission will recommend that offenders convicted of violent crimes now listed in the “two-strikes, three-strikes” law automatically be considered for the expanded sentence, regardless of when the prior crime was committed. However, it would be up to the sentencing court to determine how long the actual sentence should be.

The commission also voted to support the elimination of good time credits. The 1995 Legislature eliminated good time and the commission members agree that the elimination of good time should not be evaluated until the Legislature’s action has had time to take effect. The commission supports a move toward an earned incentive program for Montana’s adult correctional facilities in conjunction with the elimination of good time. Under the earned incentive program, inmates receive rewards for good behavior within the prison, but do not have their prison sentence reduced.

The commission also recommends that the Montana Supreme Court adopt a standard form for court judgments in criminal cases so that data on sentencing practices can be easily collected. The commission is willing to assist the Montana Supreme Court with developing this form.

CHAPTER 5

CONCLUSION

The Montana Sentencing Commission, through its report, has only briefly touched upon the complexity of issues and problems facing Montana's criminal justice system. The commission recognizes the enormous responsibility Montana's legislators assume on behalf of its citizens to enact laws which are just and sensible.

Completing their work, the commission members had a benefit which legislators rarely have - the benefit of time. The Legislature allowed the commission to devote approximately 18 months to study the interplay between sentencing and the criminal justice system. The commission members are grateful for that opportunity and share with the Legislature some guiding principles they learned.

First, there is no single solution to problems facing the criminal justice system. We must always be cognizant that a piecemeal approach to solving problems within the criminal justice system simply creates more problems. We must look at the system as an interrelated network. If one portion of the network is overburdened, the whole system fails.

Conversely, we must be mindful that the criminal justice system is not the single solution to societal problems. Before we can find solutions to problems we must identify the sources of the problems. In most instances, the problem sources lie outside the criminal justice system.

Finally, we must always know the price tag for enacting legislation which affects the criminal justice system. Historically, we have asked our legislators to make crucial decisions with very limited information and later criticize them for those decisions. Good decisions require good data. We must develop and maintain a good data base about sentencing practices in Montana to allow our legislators to make informed decisions.

The work of the Montana Sentencing Commission must be continued for the purposes of developing a solid data base, determining what impacts sentencing laws and practices have on the state's criminal justice system and correctional resources, and evaluating Montana's sentencing laws to make recommendations for achieving a more understandable sentencing system that results in consistent, effective and fair administration of the laws.

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Appendix A

**MONTANA SENTENCING
COMMISSION**

State Sentencing Structures



STATE SENTENCING STRUCTURES

DETERMINATE SENTENCING STATES

Arizona
California
Illinois
Indiana
Maine

STUDY STATES

Massachusetts
Montana
Oklahoma

INDETERMINATE SENTENCING STATES

Alabama
Alaska
Colorado
Connecticut
Georgia
Hawaii
Idaho
Iowa
Kentucky
Louisiana
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Dakota
Rhoda Island
South Carolina
South Dakota
Texas
Vermont
West Virginia
Wyoming

SENTENCING GUIDELINE STATES

Voluntary

Arkansas
Maryland
Michigan
Virginia
Wisconsin (with
presumptive
provisions for
nonviolent property
offenses)

Presumptive

Delaware
Florida
Kansas
Minnesota
North Carolina
Ohio
Oregon
Pennsylvania
Tennessee
Utah
Washington

Appendix B

MONTANA SENTENCING COMMISSION

Data Collection Subcommittee Data Collection Form



**MONTANA SENTENCING COMMISSION
FELONY SENTENCING STUDY
DATA COLLECTION FORM**

Part I: Administrative Information

1. Data Collector: _____
2. Quality Assurance: _____
3. Coder: _____
4. Keyed: _____

Part II: Felony Offender Information (Pre-Sentence Investigation)

SECTION 1: CHARACTERISTICS OF OFFENDER

1. _____ Offender's Identification Number
2. _____ County of Criminal Case:

Beaverhead/01	Big Horn/02	Blaine/03	Broadwater/04	Carbon/05
Carter/06	Cascade/07	Chouteau/08	Custer/10	Daniels/11
Dawson/12	Deer Lodge/13	Fallon/14	Fergus/15	Flathead/16
Gallatin/17	Garfield/18	Glacier/19	Golden Valley/20	Granite/21
Hill/22	Jefferson/23	Judith Basin/24	Lake/25	
Lewis & Clark/26				
Liberty/27	Lincoln/28	Madison/29	McCone/30	Meagher/31
Mineral/32	Missoula/33	Musselshell/34	Park/35	Petroleum/36
Phillips/37	Pondera/38	Powder River/39	Powell/40	Prairie/41
Ravalli/42	Richland/43	Roosevelt/44	Rosebud/45	Sanders/46
Sheridan/47	Silver Bow/48	Stillwater/49	Sweetgrass/50	Teton/51
Toole/52	Treasure/53	Valley/54	Wheatland/55	Wibaux/56
Yellowstone/57				
3. _____ Offender's Legal Representation for Current Criminal Case:
 - 1 = Private Counsel
 - 2 = Public Defender
 - 3 = Represented, Type Unknown
 - 4 = No Counsel, Represented Self
 - 9 = Missing

4. ___/___/___ Date of Sentence
5. _____ Court (Judicial District)
6. ___/___/___ Date of Arrest
7. _____ Sex:
 1 = Male
 2 = Female
 9 = Missing
8. _____ Race:
 1 = Caucasian
 2 = Black
 3 = Hispanic;
 4 = Native American
 5 = Asian
 6 = Other (Specify): _____
 9 = Missing
9. _____ Age
10. _____ Marital Status at Time of Sentencing:
 1 = Single
 2 = Married
 3 = Cohabiting
 4 = Divorced
 5 = Widowed
 9 = Missing
11. _____ Total Number of Dependent Children:
 0 = None
 1-7 = Actual Number
 8 = 8 or More
 9 = Missing / Don't Know
12. _____ Offender's Mental Health At Time Of Sentencing:
 0 = No Indication of Mental or Psychological Problems
 1 = Mental or Psychological Problems Indicated
 9 = Missing

13. _____ Offender's History of Alcohol Use:
0 = None Indicated
1 = Light to Moderate
2 = Heavy, But Not Alcoholic
3 = Alcohol Use Indicated, Level Unspecified
4 = Alcoholic (No Treatment)
5 = Alcoholic (Treatment)
9 = Missing
14. _____ Offender's History of Drug Use:
0 = None Indicated
1 = Light to Moderate
2 = Heavy, Not Addicted
3 = Addicted
4 = Recovering Drug User
5 = Drug Use Indicated, Level Unspecified
9 = Missing
15. _____ Primary Drug Use:
0 = None Indicated
1 = Heroin
2 = Crack
3 = Cocaine
4 = Marijuana
5 = Inhalants
6 = Amphetamines
7 = Hallucinogens
8 = Multiple Drugs: _____
9 = Missing
16. _____ Education:
0 = No Formal Education
1 = 1-8 years
2 = 9-11 years
3 = 12 years or GED
4 = Undergraduate (at least one semester)
5 = BA or Graduate
6 = Technical
7 = Other: _____
9 = Missing
17. _____ Employment at Time of Sentencing:
0 = Not Employed
1 = Full-time
2 = Part-time
3 = Seasonal
4 = Self
5 = Student
6 = Government Assistance
7 = Housepouse
9 = Missing

18. _____ Type of Occupation at Time of Sentencing:
- 0 = No Occupation Listed
 - 1 = Administrative, Managerial or Professional
 - 2 = Technical, Skilled Laborer, Craftsman, Foreman, etc.
 - 3 = Clerical, Sales and Related
 - 4 = Public Service
 - 5 = Farm/Ranch Related
 - 6 = Unskilled Laborer
 - 7 = Student
 - 8 = Housespouse
 - 9 = Missing

SECTION 2: OFFENDER'S PRIOR RECORD

19. _____ Total Number of Prior Juvenile Misdemeanor Adjudications:
- 00 = None Indicated
 - 01-54 = Actual Number, Up to 54
 - 55 = 55 or More
 - 88 = Juvenile Record Not Mentioned In PSI or Judgment
 - 99 = Missing
20. _____ Total Number of Prior Juvenile Felony Convictions/Adjudications:
- 00 = None Indicated
 - 01-54 = Actual Number, Up to 54
 - 55 = 55 or More
 - 88 = Juvenile Record Not Mentioned In PSI or Judgment
 - 99 = Missing
21. _____ Total Number of Prior Adult Felony Convictions (Exclude Present Offense)
- 00 = None Indicated
 - 01 to 96 = Actual Number, Up to 96
 - 97 = 97 or More
 - 98 = Felony Convictions Indicated, Unable to Determine Number
 - 99 = Missing

22. List Five Most Recent Adult Felony Convictions:

<u>Date</u>	<u>Offense</u>	<u>Statute #</u>	<u>Sentence</u>
____/____/____	_____	_____	_____
____/____/____	_____	_____	_____
____/____/____	_____	_____	_____
____/____/____	_____	_____	_____
____/____/____	_____	_____	_____

23. _____ Total Number of Prior Adult Misdemeanor Convictions:
00 = None Indicated
01-96 = Actual Number, Up To 96
97 = 97 or More
98 = Misdemeanor Convictions Indicated, Unable to Determine Number
99 = Missing
24. _____ Total Number of Prior Adult Probation Terms:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Previously on Probation, Unable to Determine Number
99 = Missing
25. _____ Total Number of Prior Adult Probation Revocations:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Revocations, Unable to Determine Number
99 = Missing
26. _____ Total Number of Prior Adult Jail Terms Resulting from Adult Convictions:
(Defendant sentenced to the county jail rather than prison)
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Jail Terms, Unable to Determine Number
99 = Missing
27. _____ Total Number of Prior Adult Prison Terms:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Terms, Unable to Determine Number
99 = Missing
28. _____ Total Number of Prior Adult Terms to Department of Corrections:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Terms, Unable to Determine Number
99 = Missing
29. _____ Total Number of Prior Terms Offender has been Placed on Intensive
Supervision:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Terms on Intensive Supervision, Unable to Determine Number
99 = Missing

30. _____ Total Number of Prior Terms Offender has been Placed at a Pre-Release Center:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Terms at a Pre-Release Center, Unable to Determine Number
99 = Missing
31. _____ Total Number of Prior Adult Paroles:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Adult Paroles, Unable to Determine Number
99 = Missing
32. _____ Total Number of Prior Adult Parole Revocations:
00 = None Indicated
01-96 = Actual Number, Up to 96
97 = 97 or More
98 = Prior Revocations, Unable to Determine Number
99 = Missing
33. _____ Length of Time Since End of Last Criminal Justice Supervision (in months):
00 = None Indicated
01 = One Month or Less
02-96 = Actual Number of Months, Up to 96
97 = 97 or more Months
98 = Prior Supervision Indicated, but Unable to Determine Length of Time Since Release
99 = Missing

Part III: Offense Information begins on next page

Part III: Offense Information

SECTION 1: FACTS FROM THE INFORMATION AND AFFIDAVIT

34. Offenses Charged *(Please specify Felony (F) or Misdemeanor (M). Include Subsection and Subparts in Code Section):*

<u>Offense:</u>	<u>Date of Offense:</u>	<u>Code Section:</u>	<u>Count #:</u>
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____
_____	/ /	_____	_____

35. / / Date the Criminal Information and Affidavit were Filed in District Court

36. _____ Were the Offenses Listed in Question 34 part of the same Criminal Episode?
 0 = Not Applicable
 1 = No
 2 = Yes
 9 = Missing

37. _____ Custody Status at Time of Offense:
 0 = Free, No Criminal Actions Pending
 1 = Free on Bail or Own Recognizance, Other Criminal Actions Pending
 2 = Probation
 3 = Parole
 4 = Incarcerated on Other Criminal Charges
 5 = Furlough from Prison
 6 = Pre-Release Center
 7 = Escape Status
 8 = Other (Specify): _____
 9 = Missing

38. _____ Intoxication (Alcohol/Drug) at Time of Offense:
0 = None Indicated
1 = Yes, Alcohol
2 = Yes, Drugs
3 = Unknown
4 = Yes, Both
9 = Missing
39. _____ Drug Offense/Alleged Behavior:
0 = Not Applicable
1 = Possession
2 = Possession with Intent to Sell
3 = Sale of Dangerous Drug
4 = Cultivation
5 = Manufacture
9 = Missing
40. _____ Primary Drug Involved in Offense:
0 = Not Applicable
1 = Heroin
2 = Crack
3 = Cocaine
4 = Marijuana
5 = Inhalants
6 = Amphetamines
7 = Hallucinogens
8 = Multiple Drugs: _____
9 = Missing
41. _____ Quantity of Primary Drug Involved in the Alleged Offense:
000 = Not Applicable
001-996 = Actual Number of Units, Up to 996
997 = 997 Units or More
999 = Missing / Don't Know
42. _____ Measuring Units Used in Question 41:
00 = Not Applicable
01 = Ounces
02 = Pounds
03 = Milligrams
04 = Grams
05 = Kilograms
06 = Pills
07 = Lids
08 = Hits
10 = Joints
11 = Envelopes / Bindles
12 = Pill Bottles
13 = Dosage Unit (unspecified)
14 = Plants
15 = Other
99 = Missing

43. _____ Use of Weapon (Based upon the Pre-Sentence Investigation):
0 = Offender Did Not Use or Possess a Weapon
1 = Offender Feigned Possession of a Weapon
2 = Co-Defendant Used a Weapon
3 = Offender Possessed Weapon but Did Not Use It
4 = Offender Used Weapon to Threaten Victim, Bystander, Police, etc.
5 = Offender Used Weapon in Attempt to Injure Victim
6 = Offender Used Weapon to Inflict Physical Injury on Victim
7 = Offender Used Weapon to Kill Victim
9 = Missing

44. _____ Number of Person Crime Victims:
0 = Not Applicable
1-5 = Actual Number of Victims Up to 5
6 = 6 or More Victims
7 = Persons Victimized, Number Unclear
9 = Missing

45. _____ Most Serious Injury of Victim (Based upon the Pre-Sentence Investigation):
0 = Not Applicable
1 = Injury, But No Treatment Required
2 = Injury, Emergency Treatment Only
3 = Injury Requiring Hospitalization
4 = Injury Resulting in Permanent Disability and/or Permanent Disfigurement
5 = Death
6 = Emotional Injury
7 = None Indicated
9 = Missing

46. _____ Victim Provocation:
0 = Not Applicable
1 = Yes
2 = No
9 = Missing

47. _____ Victim(s) Relationship(s) to Offender:
00 = Not Applicable
01 = Spouse or Significant Other
02 = Former Spouse
03 = Child
04 = Parent
05 = Sibling
06 = Stepchild
07 = Other Relative
08 = Friend
10 = Employer/Employee
11 = Acquaintance
12 = Criminal Justice Official
13 = Other (Specify): _____
14 = No Relationship
99 = Missing

48. _____ Victim(s) Age:
00 = Not Applicable
01-98 = Age of Victim
99 = Missing
49. _____ Victim(s) Sex:
0 = Not Applicable
1 = Male
2 = Female
9 = Missing
50. _____ Victim(s) Race:
0 = Not Applicable
1 = Caucasian
2 = Black
3 = Hispanic
4 = Native American
5 = Asian
6 = Other (Specify): _____
9 = Missing
51. _____ Type of Property Victim:
0 = Not Applicable
1 = Individual Victim Known to Offender
2 = Individual Victim Unknown to Offender
3 = Business Owner Victim: Employer/Employee Relationship
4 = Business Owner Victim: No Relationship
5 = Local or State Government
6 = Non-Profit Organization (Churches, United Way, etc.)
7 = Other Victim Type, Not Included Above (Specify): _____
9 = Missing
52. _____ Value of Property Stolen or Damaged (In Dollars):
000000 = Not Applicable
000001-099999 = Actual Amount to \$99,999
100000 = Loss of \$100,000 or More

Section 2: Disposition and Sentencing begins on next page

SECTION 2: DISPOSITION AND SENTENCING (taken from the Judgment)

53. Disposition of Offenses Charged in Information:

<u>Offense Name:</u>	<u>Code Section:</u>	<u>Count #:</u>	<u>*Basis for Disposition:</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

*Code For Basis For Disposition: (Refer to Plea Agreement if Offender entered a Guilty Plea)

- 01 = Guilty Plea, No Sentence Negotiated
- 02 = Guilty Plea, Sentence Negotiated
- 03 = Court Dismissed Charge, Defense Motion
- 04 = Court Dismissed Charge, Prosecution Motion
- 05 = Court Dismissed Charge based upon Negotiated Agreement of Parties
- 06 = Charge Amended to Misdemeanor
- 07 = Parties entered into Deferred Prosecution Amendment
- 08 = Jury Trial/Conviction
- 10 = Jury Trial/Acquittal
- 11 = Bench Trial/Conviction
- 12 = Bench Trial/Acquittal
- 99 = Missing

54. Total Sentence to be Served: (for this Conviction):

_____ Death
 _____ Life
 _____ Prison (in years)
 _____ Commitment to Department of Corrections
 _____ Jail (specify days or months)
 _____ Home Arrest (specify days or months)
 _____ Deferred Imp/Probation (in years)
 _____ Suspended Sentence/Probation (in years)
 \$ _____ Fine

55. _____ Is there more than one conviction and sentence in this criminal case?
1 = Yes
2 = No
56. _____ If Yes to Question 55, are the sentences to run concurrently or consecutively?
0 = Not Applicable
1 = Concurrently
2 = Consecutively
57. Other Dispositions Related to Current Conviction: 0 = No, Does Not Apply
1 = Yes, Applies
9 = Missing
- _____ Dangerous Offender
_____ Persistent Felony Offender
_____ Enhancement for Use of Dangerous Weapon
_____ Enhancement for Use of Armor Piercing Ammunition
_____ Ineligible for Parole
_____ Parole Eligibility Denied until Specific Portion of Sentence Served
_____ Ineligible for Good Time
_____ Mandatory Minimum
_____ Exception to Mandatory Minimum
_____ Credit for Time Served
_____ Formal Supervised Probation
_____ Restitution
_____ Reimbursement for Attorney Fees
_____ Court Costs
_____ Supervision Fee
_____ Surcharge
_____ May Not Possess Weapons
_____ Chemical Dependency Evaluation
_____ Chemical Dependency Treatment
_____ Abstain from Alcohol/Drugs
_____ Blood, Breath and/or Urinalysis Testing
_____ Antabuse
_____ Community Service
_____ Mental Health Evaluation
_____ Mental Health Treatment
_____ Sexual Offender Evaluation and Treatment
_____ Register as a Sexual Offender
_____ No Contact with Specified Persons
_____ Education or Training Requirements
_____ Employment Seek
_____ Employment -- Retain
_____ Recommendation for Boot Camp
_____ Recommendation for Intensive Supervision
_____ Recommendation for Pre-Release Center

58. _____ Sentence to be Served in Conjunction with a Sentence Received Previously:
0 = Not Applicable
1 = Concurrent
2 = Consecutive
3 = Concurrent and Consecutive
7 = Unclear from Available Information
9 = Missing
59. _____ Is a Revocation of Probation or Parole Involved?
0 = Not Applicable
1 = Probation
2 = Parole
3 = Probation and Parole
4 = No Revocation Involved
9 = Missing
60. _____ Pre-Sentence Investigation Order:
1 = Yes
2 = No
61. _____ Pre-Sentence Investigation Recommendation:
00 = No Recommendation Made
01 = Prison
02 = Jail
03 = Home Arrest
04 = Deferred Imposition of Sentence
05 = Suspended Entire Sentence
06 = Prison with a Portion of the Prison Sentence Suspended
07 = Department of Corrections / Boot Camp
08 = Department of Corrections
10 = Recommendation for Pre-Release
11 = Recommendation for ISP
12 = Other (specify): _____
99 = Missing
62. Aggravating Circumstances: _____

63. Mitigating Circumstances: _____

Appendix C

MONTANA SENTENCING COMMISSION

Intermediate Sanctions Subcommittee Intermediate Sanctions Placement within the Grid for Non-Drug Offenses



INTERMEDIATE SANCTIONS PLACEMENT: SENTENCING GUIDELINE GRID FOR NON-DRUG OFFENSES

	A	B	C	D	E	F	G	H
IV 48 PRS								b 24/54
V 36 PRS							b 20/60	b 16/48
VI 36 PRS			b 24/72	b 20/60	b 16/54	b 12/48	b 48	b 48
VII 24 PRS			b 16/60	b 14/54	b 48	b 48	b 36	b 36
VIII 24 PRS		b 15/48	b 36	b 36	b 36	b 24	b 24	b 18
IX 12 PRS		b 12/36	b 36	b 24	b 24	a 18	a 18	a 12
X 12 PRS	b 12/24	b 24	b 24	a 18	a 18	a 12	a 12	a 12

Intermediate Sanctions Key:

NOTE: All white squares are presumed probation sentences.

a - All of the following sanctions would be available for imposition by the judge:

Jail Time

Jail Work Release (Jail time with daily release to go to job or perform community service)

Jail Work Program (Day for day work for the county in lieu of jail time)

Home Arrest

Day Reporting

Restitution

Community Service

Fines

Offender Payment of Court and/or Intermediate Sanction Costs

b- The following sanctions, in addition to those listed for "a", would be available:

Intensive Supervision

Boot Camp

Pre-Release



Appendix D

MONTANA SENTENCING COMMISSION

Public Opinion, Education & Outreach Subcommittee Survey of Justice Officials



PROJECT INTRODUCTION

This report presents the findings from a mail survey of Montana Justice Officials. The Data Collection Subcommittee of the Sentencing Commission sent out questionnaires to the following groups: Chiefs of Police, Sheriffs, Prosecutors, Defense Attorneys and Judges. A total of 170 surveys were returned from these target groups as follows:

JUSTICE OFFICIAL GROUP	NUMBER OF RESPONSES
Sheriffs	27
Police Chiefs	28
Defense Attorneys	48
Prosecutors	43
Judges	24

The purpose of the survey was to gather opinions of the individual justice official groups, as well as a cumulative response, on sentencing procedures and practices in Montana; and other correctional issues.

QUESTION 1. Rank The Rationale For Sentencing In Order Of Importance, Where 1 Is Most Important And 4 Is Least Important

HIGHEST #1 RANKINGS				
By Percent of Response Per Judicial Group				
	Deterrence	Incapacitation	Punishment	Rehabilitation
Sheriffs			#1 Rank (48.0%)	
Police Chiefs			#1 Rank (41.7%)	
Defense Attorneys				#1 Rank (37.8%)
Judges			#1 Rank (47.6%)	
Prosecutors		#1 Rank (48.9%)		

OVERALL RANKINGS				
(Score Ranking x Number Received)				
	Deterrence	Incapacitation	Punishment	Rehabilitation
All Justice Officials	Rank #4 (19.4%)	Rank #2 (19.6%)	Rank #1 (38.9%)	Rank # (22.1%)

QUESTION 2: In Your Experience, Rank the Effectiveness of Boot Camp

RANKINGS BY JUSTICE OFFICIALS						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
Very Effective	9.1%	23.1%	20.0%	40.9%	14.6%	20.1%
Somewhat Effective	45.5%	50.0%	54.3%	36.5%	53.7%	49.7%
Effective	36.4%	23.1%	20.0%	18.2%	29.3%	26.2%
Ineffective	9.1%	3.8%	5.7%	4.5%	2.4%	4.0%

QUESTION 3: In Your Experience, Rank the Effectiveness of Pre-Release Centers

RANKINGS BY JUSTICE OFFICIALS						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
Very Effective	0.0%	44.4%	31.6%	4.5%	4.9%	9.5%
Somewhat Effective	48.1%	25.9%	52.6%	59.1%	58.5%	53.2%
Effective	33.3%	25.9%	13.2%	36.4%	22.0%	25.3%
Ineffective	18.5%	3.7%	2.6%	0.0%	14.6%	12.0%

QUESTION 4: In Your Experience, Rank the Effectiveness of Intensive Supervision

RANKINGS BY JUSTICE OFFICIALS						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
Very Effective	8.0%	16.7%	36.1%	4.5%	2.8%	14.4%
Somewhat Effective	44.0%	37.5%	44.4%	36.4%	47.2%	43.2%
Effective	44.0%	25.0%	16.7%	50.0%	44.4%	35.6%
Ineffective	4.0%	16.7%	2.8%	9.1%	5.6%	6.8%

QUESTION 5: In Your Experience, Rank the Effectiveness of Probation

RANKINGS BY JUSTICE OFFICIALS						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
Very Effective	3.7%	26.9%	9.8%	0.0%	6.4%	4.8%
Somewhat Effective	40.7%	19.2%	43.9%	65.2%	53.2%	46.1%
Effective	29.6%	50.0%	36.6%	34.8%	23.4%	29.3%
Ineffective	25.9%	3.8%	9.8%	0.0%	17.0%	19.8%

QUESTION 6: Assuming You Have a \$100 To Spend, Divide the Money Between The Following Programs.

ALLOCATION FOR FUNDING (BY DOLLARS)						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
More Prison Space	\$53.57	\$55.19	\$8.12	\$36.43	40.64	\$36.26
Better Treatment Programs	\$6.61	\$11.35	\$14.90	\$14.95	11.67	\$9.51
Better Community Based Supervision / Treatment	\$9.61	\$9.46	\$39.95	\$17.90	19.80	\$21.43
Drug and Crime Prevention	\$9.32	\$12.88	\$16.45	\$1.35	13.33	\$13.31
Juvenile Offender Programs	\$20.89	\$10.77	\$20.45	\$29.87	14.11	\$18.52

QUESTION 6: Assuming You Have a \$100 To Spend, Divide the Money Between The Following Programs.

RANKINGS FOR FUNDING						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
More Prison Space	1	1	5	1	1	1
Better Treatment Programs	5	2	4	4	5	5
Better Community Based Supervision / Treatment	3	5	1	3	2	2
Drug and Crime Prevention	4	3	3	5	4	4
Juvenile Offender Programs	2	4	2	2	3	3

QUESTION 7: Which of the Following Best Describes Your Opinion on the Level of Judicial Discretion in Montana

RANKINGS BY JUSTICE OFFICIALS						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
Judges Have Appropriate Discretion	48.1%	28.0%	69.8%	87.5%	70.2%	62.9%
Judges Have Too Little Discretion	14.8%	8.0%	14.0%	12.5%	12.8%	12.4%
Judges Have Too Much Discretion	37.0%	64.0%	16.3%	0.0%	14.9%	24.7%

QUESTION 8: In Your Opinion, Which Entity Should Make Policy Decisions About Sentencing

RANKINGS BY JUSTICE OFFICIALS						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
Judges	17.4%	21.7%	40.5%	15.0%	16.7%	23.8%
Legislature	60.9%	52.2%	51.4%	85.0%	78.6%	64.6%
Parole Board	4.3%	0.0%	5.4%	0.0%	0.0%	2.0%
Prosecutors	17.3%	26.1%	2.7%	0.0%	4.3%	9.5%

QUESTION 9: In Your Opinion, Which Entity Should Determine the Type and Length of Punishment

RANKINGS BY JUSTICE OFFICIALS						
	SHERIFFS	POLICE CHIEFS	DEFENSE ATTORNEYS	JUDGES	PROSECUTORS	ALL RESPONDENTS
Judges	50.0%	28.0%	74.4%	90.9%	63.4%	61.7%
Legislature	33.3%	32.0%	12.8%	4.5%	24.4%	20.8%
Dept. of Corrections	12.5%	4.0%	10.3%	4.5%	7.3%	0.6%
Parole Board	0.0%	0.0%	2.6%	0.0%	0.0%	10.4%
Prosecutors	4.2%	36.0%	0.0%	0.0%	4.9%	6.5%

GREATEST PROBLEM FACED

SAMPLE OF PROBLEMS MENTIONED
Lack of money
Lab work is too slow
Failure to prosecute felonies / get warrants
Time and effort it takes to insure case is ready and worthy of prosecution lack of investigative support and resources
Courts are too slow
Arbitrary decision by probation department in screening for ISP or pre-release
Inadequate funding for defense functions / indigent defense
Defense attorneys have less resources than prosecutors
Inadequate funding of community corrections and programs
Parole Board's involvement in length of sentence - should be left to judges
Unable to keep and find good police officers
Growing danger to police officers
Lack of effective juvenile offender treatment and detention/ partly due to lack of state and tribal coordination / lack of parent accountability
Resources not keeping up with the increase in crime / too much work / too many cases
Lack of suitable alternatives to prison
Lack of manpower
Lack of jail space / detention beds
Plea bargains that do nothing for victim and society / sentence isn't deterrent or sufficient punishment / Too many repeat offenders
Delays in getting prisoners to prison after sentencing
Restitutions are not enforced
Takes too long to prosecute / Long time to prosecute and then offender gets a minimal sentences received
Judges are too prosecutorial minded
Inconsistent decisions of the MT Supreme Court / judges

GREATEST PROBLEM FACED (continued)

No guilty pleas so everything requires a hearing
Difficulty weighing practical and financial conditions against doing the right thing
Understanding judges' sentences- e.g. impact of good time
Inadequately trained county attorneys / counsel
Can't release misdemeanor inmates when jail is full
Public misconception on how system works
Lack of funding for chemical dependency and mental health treatment programs
Lack of funding for rehabilitation
Uncooperative prosecutors who seek convictions vs justice
Disproportionate funding for law enforcement agencies and without proper controls
Unprofessional police officers and lower court judges
Incomplete and inaccurate investigating officer reports
First time offenders who get a prison sentence because they used a weapon
Youthful first-time offenders convicted of major violent offenses
Political pressure on prosecutors and judges
High cost of defense for clients / fines on indigent clients
Inconsistencies between jurisdictions
Unfounded prosecution on marginal evidence / unfair sentencing / illegal sentences
Frivolous motion
Not getting just notice requirement of recidivism
Trying to get juries to properly apply the law
Lack of trained investigative personnel
Impact of sentencing guidelines and mandatory minimum sentences
Legislative erosion of the 4th and 5th amendment
Growing procedural minefield created by the legislature and MT Supreme Court

STRENGTHS OF CRIMINAL JUSTICE SYSTEM

SAMPLE REPOSES OF STRENGTHS MENTIONED
Pre-Release Centers
Boot Camps
Changing Good Time
Public Speedy Trials
Indigent's Right to Counsel
Procedural Rules
Small State Makes Communication Easy
Judicial Discretion to Tailor Sentences
Dedicated, Conscientious, Knowledgeable Probation / Parole Staff
Services Do Excellent Job When Called Upon
Top Quality Judges / Efficient Decisive Judiciary
Good Juries
Flexible Sentencing / Broad Discretion
Pre-Release and Community Involvement
Community Oriented Law Enforcement and Judiciary
Rehabilitation of First Time Offenders
Quality Prosecutors / Defense Attorneys
Intensive Supervised Probation System

WEAKNESSES OF CRIMINAL JUSTICE SYSTEM

SAMPLE RESPONSES OF WEAKNESSES MENTIONED
Lack of Community Resources
After Care for Juveniles
Poor Public Relations
Ineffective Juvenile Disposition Remedies
Lack of Community Supervision / Treatment Programs
Limited Probation Staff and Resources
Lack of Proper Prison Cells
Criminals with Health Problems in Same Program
Treatment too Expensive and Exclusive
Not Enough Treatment Programs and Too Distant for many
Poor Juvenile Justice System / Inadequate Juvenile System
Lack of Continuing Legal Ed
Lack of Bed Space / Resources / Jail Space
Defendant's Not Held Responsible for Actions
System Pressure to Get Through Caseload
Incompetent / Ineffective Counsel and Officers
Lack of Funds for Professional Services
Uncertainty as to Length of Sentence
Lack of Sex Offender Treatment Programs
Administration at DOC
Lack of Separate Facility other than MSP for Youthful Non-Violent Offenders
Lack of Vision for Future
Any Legislator that Believes Sentencing Guidelines are Necessary or Advisable
Too Little Alcohol / Drug Treatment
Problems with DOC and Public's Mistrust

Appendix E

MONTANA SENTENCING COMMISSION

Public Opinion, Education & Outreach Subcommittee Public Forum Agenda



PUBLIC FORUM A G E N D A

**sponsored by
THE MONTANA SENTENCING COMMISSION**

- 6:30 p.m. **INTRODUCTION**
- Welcome
 - Introduce Panel
 - Opening Statement
- 6:40 p.m. **THE MONTANA SENTENCING COMMISSION: A BRIEF OVERVIEW**
- 6:45 p.m. **BASIC FACTS THE COMMISSION HAS LEARNED
ABOUT CORRECTIONS**
- 6:50 p.m. **THE FRAMEWORK FOR SMALL GROUP DISCUSSION:**
What Sentencing Structure is Right for Montana?
- What We Have Now
 - An Alternative
- 7:00 p.m. **BREAK INTO SMALL GROUPS TO IDENTIFY:**
- 7:30 p.m.
 - Strengths of Our Present System
 - Weaknesses of Our Present System
 - How Can We Make Our Present System Better?
- 7:30 p.m. **SMALL GROUP DISCUSSION CONTINUES:**
- 8:00 p.m.
 - Strengths of a Guideline System
 - Weaknesses of a Guideline System
- 8:00 p.m. **REPORT OUT TO FULL GROUP**
- 8:15 p.m. **INDIVIDUAL PUBLIC COMMENT**
- 8:45 p.m. **QUESTION AND ANSWER PERIOD & WRITTEN EVALUATION**



Appendix F

MONTANA SENTENCING COMMISSION

Sentencing Guidelines Subcommittee Crime Seriousness Ranking





CRIME SERIOUSNESS RANKING IN MONTANA

FINAL DRAFT

LEVEL I:

Deliberate Homicide 45-5-102
A person commits deliberate homicide if he/she causes the death of another human being; or in the process of attempting or committing a forcible felony, causes the death of another human being.

LEVEL II:

Aggravated Kidnapping 45-5-303
A person commits aggravated kidnapping if he/she restrains another person to hold them for ransom or as a hostage; to facilitate commission of any felony or flight; inflicts bodily injury to terrorize the victim; to interfere with governmental or political function; or to hold them for a position of involuntary servitude (unless the offender has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury.)

Mitigated Deliberate Homicide 45-5-103
A person commits mitigated deliberate homicide if he/she causes the death of another human being while under extreme mental or emotional stress for which there is a reasonable explanation.

LEVEL III:

Aggravated Assault 45-5-202(1)
A person commits aggravated assault if he/she causes serious bodily injury to another

**Sexual Intercourse Without Consent 45-5-503(3)(a) and (b)
A person commits the offense of sexual intercourse without consent if he/she has sexual intercourse (any penetration) with another without that person's consent.

A person commits sexual intercourse without consent if the victim is less than 16 years old and the offender is 3 or more years older than the victim;

OR

If the offender inflicts bodily injury on anyone in the course of committing sexual intercourse without consent;

OR

****The Sentencing Guidelines Subcommittee's recommendation is to change the age of consent, for all sexual crimes that include an age of consent, from 16 to 14.**

If two or more offenders are convicted of the offense with the same victim in an incident in which each offender was present at the location of the offense...and each offender could have reasonably known of the other's offense.

Incest

45-5-507

If it is a sexual intercourse without consent and any of the factors listed under Sexual Intercourse Without Consent are present.

A person commits incest if he/she marries, cohabits with, has **sexual intercourse** or sexual contact with an ancestor, descendant, brother or sister (whole or half), or stepson or stepdaughter.

Sexual Abuse of Children

45-5-625(1)(a)(b) and (c)

A person commits sexual abuse of children if he/she knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated

OR

The offender knowingly photographs, films, videotapes, develops or duplicated the photographs, films, or videotapes, or records a child engaging in sexual conduct

OR

The offender persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated...

Aggravated Promotion of Prostitution

45-5-603(1)(b) and (c)

A person commits aggravated promotion of prostitution if he/she promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

OR

The offender promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

Aggravated Kidnapping

45-5-303

(The offender voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury.) A person commits aggravated kidnapping if he/she restrains another person to hold them for ransom or as a hostage; to facilitate commission of any felony or flight; inflicts bodily injury or terrorizes the victim; to interfere with governmental or political function; or to hold them for a position of involuntary servitude.

LEVEL IV:

****Sexual Intercourse Without Consent** 45-5-503(1)
A person commits sexual intercourse without consent if he/she has sexual intercourse without consent with another person.

Felony Assault 45-5-202(2)(a)
A person commits felony assault if he/she causes bodily injury to another with a weapon.

Felony Assault 45-5-202(2)(c)
A person causes bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

Mistreating Prisoners 45-5-204(1)(a) and (b) with modification
A person assaults or injures a prisoner, or intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner to obtain a confession.

Kidnapping 45-5-302
A person commits kidnapping if he/she restrains another person by holding in isolation or threatening physical force.

Robbery 45-5-401
A person commits robbery if he/she commits or threatens to commit bodily injury in the course of committing a theft; or commits or threatens to commit any felony other than theft while committing a theft.

Aggravated Burglary 45-6-204(2)(a) and (b)
A person commits aggravated burglary if he/she enters or remains unlawfully in an occupied structure to commit an offense therein; and 1.) he is armed with explosives or a weapon; or 2.) he inflicts or attempts to inflict bodily injury on another.

Escape 45-7-306(3)(a) and (b)(ii)
(Situations where the prisoner uses or threatens to use force, physical violence, a weapon, or a simulated weapon.) A person commits escape when he/she escapes from transit to or from a state prison or jail by using the threat of violence or a weapon; or while in transit from one detention facility to another uses the threat of violence or a weapon.

Arson 45-6-103
A person, by means of fire or explosives, damages or destroys a structure, vehicle, crop, or other property that the person owns or has a possessory interest in; or places another person in danger of death or bodily injury.

Possession of a Deadly Weapon By a Prisoner 45-8-318
A person commits possession of a deadly weapon by a prisoner if he/she is imprisoned in the state prison or jail, or while in transit to or from and possesses a weapon.

Rioting 45-8-103(3)
A person commits riot while he/she engages in an act of violence while incarcerated in the state prison or jail.

Incitement to Riot 45-8-104(3)
A person commits incitement to riot if he/she engages in conduct that encourages other persons to riot, while incarcerated in a state correctional facility.

LEVEL V:

Negligent Homicide 45-5-104
A person commits negligent homicide if he/she negligently causes the death of another human being.

Criminal Endangerment 45-5-207
A person commits criminal endangerment if he/she engages in conduct that creates a substantial risk of death or serious bodily injury to another.

Felony Assault 45-5-202(2)(b)
A person causes reasonable apprehension of serious bodily injury to another by use of a weapon.

Assault Upon A Minor 45-5-201(3)
A person causes bodily injury to a victim less than 14 years old.

Burglary 45-6-204
A person enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

****Sexual Assault** 45-5-502(3)
A person commits sexual assault if he subjects another to any sexual contact without consent.

If the victim is less than 16 years old and the offender is 3 or more years older than the victim

OR

The offender inflicts bodily injury upon anyone in the course of committing sexual assault.

Incest 45-5-507
A person commits incest if it is a Sexual Assault and one of the factors listed under Sexual Assault is present.

Escape 45-7-306(3)(b)(i)
A person has been charged with or convicted of a felony and escapes from or while in transit to or from a state prison or jail. (*Prisoner does not use or threaten to use force, physical violence, a weapon or a simulated weapon.*)

LEVEL VI:

Aiding Or Soliciting Suicide 45-5-105

Aggravated Promotion of Prostitution 45-5-603(1)(a)
The offender compels another to engage in or promote prostitution.

Intimidation 45-5-203
A person threatens another, under circumstances which reasonably tend to produce fear that the threat will be carried out, to cause the other person to perform or omit the performance of any act.

Partner and Family Member Assault (3rd Offense) 45-5-206(3)(a)
A person purposely causes bodily injury to a partner or family member; negligently causes bodily injury to a family member with a weapon; or causes reasonable apprehension of bodily injury.

Stalking (Second Offense) 45-5-220(3)
A person causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly stalking that person.

- Privacy in Communications (Third Offense) 45-8-213(1)(a)
A person violates privacy in communications when he/she terrifies, intimidates, threatens, harasses, annoys, or offends any person by telephone and uses or suggests obscene, lewd, or profane language or acts.
- Sexual Abuse of Children 45-5-625(1)(e)
The offender possesses any visual or print medium in which children are engaged in sexual conduct, actual or simulated.
- Indecent Exposure (3rd Offense) 45-5-504(1) and (2)(c)
A person, for the purpose of personal arousal or gratification of sexual desire, exposes the genitals in a manner likely to cause alarm.
- Criminal Mischief 45-6-101
(The offender caused damage of \$100,000 or greater.) A person injures, damages, destroys, or tampers with property of another without consent.
- Desecration of Capitol (Recommended for Elimination from the Code) 45-6-104**
(The offender caused damage of \$100,000 or greater.)
- Theft 45-6-301 (all sections and subsections)
(The offender deprived owner of property of \$100,000 or greater.) A person exerts unauthorized control over the property of the owner.
- Failure to Return Rented or Leased Personal Property 45-6-309
(The offender deprived owner of property of \$100,000 or greater.) A person fails to return rented or leased property to the rightful owner within 48 hours after the time provided for the return in the rental/lease agreement.
- Unlawful Use of a Computer 45-6-311
(The property involved is \$100,000 or greater.) A person obtains the use of or alters or destroys a computer or computer equipment without consent of the owner.
- Unauthorized Acquisition or Transfer of Food Stamps 45-6-312
(The property involved is \$100,000 or greater.) A person acquires, purchases, possesses, or uses any food stamps that he/she is not entitled to; transfers, sells, trades, or gives food stamps to another person not entitled to use them.
- Medicaid Fraud 45-6-313
(The claims, payments or benefits is \$100,000 or greater.) A person obtains medicaid payment or benefit under false pretenses.

Issuing a Bad Check 45-6-316
(The value of any property, labor, or services obtained or attempted to be obtained is \$100,000 or greater.) A person issues a check, either real or fictitious, knowing that it will not be paid by the depository.

Deceptive Practices 45-6-317
(The value of the property, labor, or services obtained or attempted to be obtained is \$100,000 or greater.) A person commits the offense of deceptive practices by deceptively using a credit card or making a deceptive statement to obtain property, labor or services valued at \$100,000 or greater.

Forgery 45-6-325
(The value of the property, labor, or services obtained or attempted to be obtained is \$100,000 or greater.) A person without authority makes or alters any document capable of being used to defraud another.

Illegal Branding or Altering or Obscuring a Brand 45-6-327
(The value of the commonly domesticated hooved animal(s) involved in the offense is \$100,000 or greater.) A person brands any commonly domesticated hooved animal or removes, covers, alters, or defaces a brand with the purpose to obtain unauthorized control over that animal.

LEVEL VII:

Possession of Destructive Device 45-8-334
A person, with the purpose to commit a felony, possesses a destructive device in a public place, private habitation, or on public transportation.

Possession of Explosives 45-8-335
A person possesses, manufactures, transports, buys, or sells an explosive compound, flammable material or timing/detonating device for use with an explosive compound or incendiary device.

Possession of Silencer 45-8-336
A person possesses, manufactures, transports, buys or sells a silencer to use it to commit an offense or knows that another person has such a purpose.

Incest 45-5-507(1)
A person commits the offense of Incest if he knowingly marries or cohabits with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter.

- Aggravated Nonsupport 45-5-621(2)(a)(i) and (ii)
A person leaves the state without making reasonable provisions for the support of a spouse, child, or other dependent; or has been previously convicted of this offense.
- Aggravated Visitation Interference 45-5-632
A person changes the residence of a minor child, over whom he/she has legal custody, to another state without giving written notice or without written consent of the person entitled to visitation pursuant to a court order.
- Custodial Interference 45-5-304
A person, knowing he/she has no legal right to do so, takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another; or prior to a court order determining custodial rights, takes, entices, or withholds any child from the other parent when the action manifests a purpose to substantially deprive that parent of parental rights; or is one of two persons who has joint custody of a child under a court order and deprives the other parent of parental rights.
- Bribery In Official Political Matters 45-7-101
A person confers, agrees to confer upon another, or solicits, accepts, or agrees to accept benefit as a consideration for the recipient's decision, vote, recommendation, or other exercise of discretion as a public servant, party official, voter, or exercise of official discretion in a judicial or administrative proceeding.
- Threats and Other Improper Influence in Official and Political Matters 45-7-102
A person threatens to harm or injures any person, public servant or party official, or juror, or family member of that person, or property with the purpose to influence the person's decision, opinion, recommendation, vote or other exercise of discretion of a public servant.
- Perjury 45-7-201
A person, in any official proceeding, makes a false statement under oath or swears or affirms the truth of a statement previously made with the statement is material.
- Tampering With Witnesses and Informants 45-7-206
A person, believing that an official proceeding or investigation is pending or about to be instituted, attempts to induce or cause a witness or informant to testify or inform falsely, withhold testimony or information, or absent himself from any proceeding or investigation to which he has been summoned.

- Tampering With Or Fabricating Physical Evidence** 45-7-207
 A person, believing that an official proceeding or investigation is pending or about to be instituted, alters, destroys, conceals or removes any record, document, or thing in order to impair its verity or availability in a proceeding or investigation; makes, presents, or uses any record, document or thing that is false to mislead an investigator.
- Bail Jumping** 45-7-308
 A person, after being released on bond by the court, fails to appear at that time and place for the proceeding.
- Criminal Mischief** 45-6-101
 (The offender caused damage greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Desecration of Capitol (Recommended for Elimination from the Code)** 45-6-104
 (The offender caused damage of greater than \$50,000 but less than \$100,000.)
- Theft** 45-6-301 (all sections and subsections)
 (The offender deprived owner of property valued greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Failure to Return Rented or Leased Personal Property** 45-6-309
 (The offender deprived owner of property of valued greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Unlawful Use of a Computer** 45-6-311
 (The property involved is greater than 50,000 but less than \$100,000.) See definition in Level VI.
- Unauthorized Acquisition or Transfer of Food Stamps** 45-6-312
 (The property involved is greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Medicaid Fraud** 45-6-313
 (The claims, payments or benefits is greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Issuing a Bad Check** 45-6-316
 (The value of any property, labor, or services obtained or attempted to be obtained is greater than \$50,000 but less than \$100,000.) See definition in Level VI.

- Deceptive Practices 45-6-317
(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Forgery 45-6-325
(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Illegal Branding or Altering or Obscuring a Brand 45-6-327
(The value of the commonly domesticated hooved animal(s) involved in the offense is greater than \$50,000 but less than \$100,000.) See definition in Level VI.
- Privacy in Communications 45-8-213(1)(b)
A person uses a telephone to attempt to extort money or another thing of value from any person or to disturb by repeated phone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received.
- LEVEL VIII:**
- Criminal Mischief 45-6-101
(The offender caused damage greater than \$10,000 but less than \$50,000.) See definition in Level VI.
- Desecration of Capitol (Recommended for Elimination from the Code) 45-6-104**
(The offender caused damage of greater than \$10,000 but less than \$50,000.)
- Theft 45-6-301 (all sections and subsections)
(The offender deprived owner of property valued greater than \$10,000 but less than \$50,000.) See definition in Level VI.
- Failure to Return Rented or Leased Personal Property 45-6-309
(The offender deprived owner of property of valued greater than \$10,000 but less than \$50,000.) See definition in Level VI.
- Unlawful Use of a Computer 45-6-311
(The property involved is greater than 10,000 but less than \$50,000.) See definition in Level VI.
- Unauthorized Acquisition or Transfer of Food Stamps 45-6-312
(The property involved is greater than \$10,000 but less than \$50,000.) See definition in Level VI.

Medicaid Fraud 45-6-313
(The claims, payments or benefits is greater than \$10,000 but less than \$50,000.)
See definition in Level VI.

Issuing a Bad Check 45-6-316
(The value of any property, labor, or services obtained or attempted to be obtained is greater than \$10,000 but less than \$50,000.) See definition in Level VI.

Deceptive Practices 45-6-317
(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$10,000 but less than \$50,000.) See definition in Level VI.

Forgery 45-6-325
(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$10,000 but less than \$50,000.) See definition in Level VI.

Illegal Branding or Altering or Obscuring a Brand 45-6-327
(The value of the commonly domesticated huffed animal(s) involved in the offense is greater than \$10,000 but less than \$50,000.) See definition in Level VI.

LEVEL IX:

Carrying A Concealed Weapon 45-8-316(2)
A person who has previously been convicted of a felony, carries or bears a concealed weapon upon his person any weapon.

Possessing A Sawed Off Firearm 45-8-340(4)
A person possesses a rifle or shotgun whose barrel length has been altered from the original manufacture length and the person has one or more prior convictions under this section or one or more prior felony convictions.

Criminal Mischief 45-6-101
(The offender caused damage greater than \$2,500 but less than \$10,000.) See definition in Level VI.

Desecration of Capitol (Recommended for Elimination from the Code) 45-6-104
(The offender caused damage of greater than \$2,500 but less than \$10,000.)

Theft 45-6-301 (all sections and subsections)
(The offender deprived owner of property valued greater than \$2,500 but less than

\$10,000.) See definition in Level VI.

Failure to Return Rented or Leased Personal Property 45-6-309
(The offender deprived owner of property of valued greater than \$2,500 but less than \$10,000.) See definition in Level VI.

Unlawful Use of a Computer 45-6-311
(The property involved is greater than 2,500 but less than \$10,000.) See definition in Level VI.

Unauthorized Acquisition or Transfer of Food Stamps 45-6-312
(The property involved is greater than \$2,500 but less than \$10,000.) See definition in Level VI.

Medicaid Fraud 45-6-313
(The claims, payments or benefits is greater than \$2,500 but less than \$10,000.) See definition in Level VI.

Issuing a Bad Check 45-6-316
(The value of any property, labor, or services obtained or attempted to be obtained is greater than \$2,500 but less than \$10,000.) See definition in Level VI.

Deceptive Practices 45-6-317
(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$10,000 but less than \$50,000.) See definition in Level VI.

Forgery 45-6-325
(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$2,500 but less than \$10,000.) See definition in Level VI.

Impersonation of a Public Servant 45-7-209
A person falsely pretends to hold a position in the public service with the purpose to induce another individual to submit to the pretended official authority or otherwise act in reliance upon that pretense to the individual's prejudice.

Illegal Branding or Altering or Obscuring a Brand 45-6-327
(The value of the commonly domesticated hooved animal(s) involved in the offense is greater than \$2,500 but less than \$10,000.) See definition in Level VI.

LEVEL X:

#Harming A Police Dog	45-8-209
#Cruelty To Animals	45-8-211
#Causing Animals to Fight	45-8-210
# Consider combining offenses into one statute and also consider making these misdemeanor offenses.	
Chain Distributor Schemes A person promotes, sells, or encourages participation in any chain distributor scheme.	45-6-319
Criminal Mischief (The offender caused damage greater than \$500 but less than \$2,500.) See definition in Level VI.	45-6-101
Desecration of Capitol (Recommended for Elimination from the Code) (The offender caused damage of greater than \$500 but less than \$2,500.)	45-6-104
Theft (The offender deprived owner of property valued greater than \$500 but less than \$2,500.) See definition in Level VI.	45-6-301 (all sections and subsections)
Failure to Return Rented or Leased Personal Property (The offender deprived owner of property of valued greater than \$500 but less than \$2,500.) See definition in Level VI.	45-6-309
Unlawful Use of a Computer (The property involved is greater than \$500 but less than \$2,500.) See definition in Level VI.	45-6-311
Unauthorized Acquisition or Transfer of Food Stamps (The property involved is greater than \$500 but less than \$2,500.) See definition in Level VI.	45-6-312
Medicaid Fraud (The claims, payments or benefits is greater than \$500 but less than \$2,500.) See definition in Level VI.	45-6-313
Issuing a Bad Check	45-6-316

(The value of any property, labor, or services obtained or attempted to be obtained is greater than \$500 but less than \$2,500.) See definition in Level VI.

Deceptive Practices

45-6-317

(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$500 but less than \$2,500.) See definition in Level VI.

Forgery

45-6-325

(The value of the property, labor, or services obtained or attempted to be obtained is greater than \$500 but less than \$2,500.) See definition in Level VI.

Illegal Branding or Altering or
Obscuring a Brand

45-6-327

(The value of the commonly domesticated hooved animal(s) involved in the offense is greater than \$500 but less than \$2,500.) See definition in Level VI.

LIST OF CRIMES TO EXCLUDE FROM THE GUIDELINES

Criminal Syndicalism	45-8-105
Bringing Armed Men Into The State	45-8-106
Prohibited Activities	45-8-109
**Ritual Abuse of Minor	45-5-627
Employer Misconduct	45-7-501

Regulatory Crimes not included in Title 45 will be dealt with if the Commission decides guidelines are advisable.

Appendix G

MONTANA SENTENCING COMMISSION

Sentencing Guidelines Subcommittee Criminal History Scale



CRIMINAL HISTORY SCALE

- CLASS A: The offender's criminal history includes 3 or more person felonies in any combination of adult convictions or juvenile adjudications.
- CLASS B: The offender's criminal history includes two person felonies in any combination of adult convictions or juvenile adjudications.
- CLASS C: The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony; and one adult conviction or juvenile adjudication for a non-person felony.
- CLASS D: The offender's criminal history includes one adult conviction or juvenile adjudication for a person felony, but no adult conviction or juvenile adjudications for a non-person felony.
- CLASS E: The offender's criminal history includes three or more adult convictions or juvenile adjudications for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
- CLASS F: The offender's criminal history includes two adult convictions or juvenile adjudications for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
- CLASS G: The offender's criminal history includes three adult convictions for Class A misdemeanors; one adult conviction or juvenile adjudication for a non-person felony but no adult conviction or juvenile adjudication for a person felony.
- CLASS H: The offender's criminal history includes no adult felony conviction or juvenile adjudication for a person or non-person felony; and not more than two adult convictions for Class A misdemeanors.

One Level I or Level II Drug Conviction = one person felony conviction

Two Level III or Level IV Conviction = one person felony conviction

Level V, VI, VII, or VIII Conviction = non-person felony

Appendix H

MONTANA SENTENCING COMMISSION

Sentencing Guidelines Subcommittee Sample Sentencing Guidelines Grid for Non-Drug Offenses



**SAMPLE
SENTENCING GUIDELINE GRID
NON-DRUG OFFENSES**

	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>H</i>
I 60 PRS	LIFE	LIFE	LIFE	600	600	480	360	240
II 60 PRS	360	240	180	160	150	130	110	90
III 48 PRS	240	180	120	96	84	72	60	36
IV 48 PRS	180	120	84	72	72	48	36	24/ 54
V 36 PRS	160	100	60	48	48	24	20/ 60	16/ 48
VI 36 PRS	60	40	24/ 72	20/ 60	16/ 54	12/ 48	48	48
VII 24 PRS	24	18	16/ 60	14/ 54	48	48	36	36
VIII 24 PRS	18	15/ 48	36	36	36	24	24	18
IX 12 PRS	12	12/ 36	36	24	24	18	18	12
X 12 PRS	12/ 24	24	24	18	18	12	12	12



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